



1997 SENATE BILL 471

February 25, 1998 - Introduced by Senators ROESSLER, MOEN, BRESKE, CLAUSING, DRZEWIECKI, A LASEE, MOORE, PLACHE, ROSENZWEIG and WIRCH, cosponsored by Representatives BALDWIN, UNDERHEIM, KRUSICK, BAUMGART, BOCK, BOYLE, CARPENTER, DOBYNS, DUFF, GOETSCH, GUNDERSON, HAHN, HANSON, HASENOHRL, HEBL, HUBER, KELSO, LADWIG, LAZICH, LORGE, MORRIS-TATUM, MURAT, NOTESTEIN, OLSEN, OURADA, PLALE, PLOUFF, R. POTTER, POWERS, RILEY, ROBSON, RYBA, SERATTI, SPRINGER, SYKORA, TURNER, WASSERMAN, L. YOUNG and R. YOUNG. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT** *to renumber and amend* 46.90 (4) (b) 1.; *to amend* 46.90 (4) (a) 1. and
2 2. and 50.07 (1) (e); and *to create* 16.009 (5), 46.90 (4) (b) 1. b. and c., 46.90 (4)
3 (d), 50.07 (1) (em) and 50.07 (3) of the statutes; **relating to:** protection against
4 retaliation for reporting to any state official abuse or neglect in certain
5 facilities, providing a cause of action and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, any person may report suspected abuse or neglect of an elderly person to the county agency designated to receive and investigate such reports. No employer may discharge or otherwise discriminate against an employee who makes an abuse or neglect report to the county agency. An employee who is discharged or discriminated against because of the report has a private cause of action against the employer.

Currently, no person may intentionally retaliate or discriminate against any resident or employe of a long-term care facility for contacting or providing information to any state official, or for initiating, participating in, or testifying in any action against the facility. Violators of this prohibition may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

This bill provides that any person who is discharged or otherwise retaliated or discriminated against for contact made or information provided by or on behalf of that person to any state official or to the board on aging and long-term care may commence an action in circuit court for damages incurred as a result of the discharge,

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retaliation or discrimination together with punitive damages, court costs and attorney fees.

The bill also prohibits any person from discharging, retaliating or otherwise discriminating against any person on whose behalf another person makes a report or otherwise cooperates in the reporting or investigating of the report. Violators of this prohibition are subject to a fine of not more than \$1,000 or imprisonment of not more than 6 months or both.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.009 (5) of the statutes is created to read:

2 16.009 (5) (a) No person may do any of the following:

3 1. Discharge or otherwise retaliate or discriminate against any person for
4 contacting, providing information to or otherwise cooperating with the board.

5 2. Discharge or otherwise retaliate or discriminate against any person on
6 whose behalf another person has contacted, provided information to or otherwise
7 cooperated with the board.

8 (b) Any person who violates par. (a) may be fined not more than \$1,000 or
9 imprisoned for not more than 6 months or both.

10 (c) Any person who is discharged or otherwise retaliated or discriminated
11 against in violation of par. (a) may commence an action in circuit court for damages
12 incurred as a result of the violation together with punitive damages, court costs and
13 reasonable actual attorney fees.

14 **SECTION 2.** 46.90 (4) (a) 1. and 2. of the statutes are amended to read:

15 46.90 (4) (a) 1. Any person may report to the county agency or to any state
16 official, including the office of the long-term care ombudsman under s. 16.009 (4),
17 that he or she believes that abuse, material abuse or neglect has occurred if the

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1 person is aware of facts or circumstances that would lead a reasonable person to
2 believe or suspect that abuse, material abuse or neglect has occurred. The person
3 shall indicate the facts and circumstances of the situation as part of the report.

4 2. Any person who believes that self-neglect has occurred may report that
5 belief and the facts and circumstances contributing to the belief to the county agency
6 or to any state official, including the office of the long-term care ombudsman under
7 s. 16.009 (4).

8 **SECTION 3.** 46.90 (4) (b) 1. of the statutes is renumbered 46.90 (4) (b) 1. a. and
9 amended to read:

10 46.90 (4) (b) 1. a. No ~~employer~~ person may discharge or otherwise retaliate or
11 discriminate against any person for reporting in good faith under this subsection.

12 **SECTION 4.** 46.90 (4) (b) 1. b. and c. of the statutes are created to read:

13 46.90 (4) (b) 1. b. No person may discharge or otherwise retaliate or
14 discriminate against any person on whose behalf another person has reported in
15 good faith under this subsection.

16 c. Any person who violates this subdivision may be fined not more than \$1,000
17 or imprisoned for not more than 6 months or both.

18 **SECTION 5.** 46.90 (4) (d) of the statutes is created to read:

19 46.90 (4) (d) If a report under par. (a) is made to a state official, the state official
20 shall refer the report to the appropriate county agency.

21 **SECTION 6.** 50.07 (1) (e) of the statutes is amended to read:

22 50.07 (1) (e) Intentionally retaliate or discriminate against any resident or
23 employe for contacting or providing information to any state official, including the
24 office of the long-term care ombudsman under s. 16.009 (4), or for initiating,

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1 participating in, or testifying in an action for any remedy authorized under this
2 subchapter.

3 **SECTION 7.** 50.07 (1) (em) of the statutes is created to read:

4 50.07 (1) (em) Intentionally retaliate or discriminate against any resident or
5 employe on whose behalf another person contacted or provided information to any
6 state official, including the office of the long-term care ombudsman under s. 16.009
7 (4), or initiated, participated in or testified in an action for any remedy authorized
8 under this subchapter.

9 **SECTION 8.** 50.07 (3) of the statutes is created to read:

10 50.07 (3) Any person who is discharged or otherwise retaliated or
11 discriminated against in violation of sub. (1) (e) or (em) may commence an action in
12 circuit court for damages incurred as a result of the violation together with punitive
13 damages, court costs and reasonable actual attorney fees.

14 (END)